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(13) The Court erred in overlooking that there was still a much stronger reason why the Court could

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(16) The most important question in this appeal is this: The Court recites that on Sept. 15, 1942 this cause came on for trial (before the District Court) on the Debtors' petition for an extension of time to redeem, and to pay the $5650.00 into Court on all the issues including and on the Creditor's cross-petition or answer to recover of the Debtors its claim of alleged rent in the sum of $4606.25 and the Debtor being in Court and by Counsel and the Federal Land Bank by Theo. W. Bates, its Counsel and the Court having "and the Court having read the verified petition of the Debtor and heard the argument of Counsel." (This must have been a trial on all of the issues enumerated in the final finding and order on page 51.) What in the world was Mr. Bates arguing if it were not the issues set out in said order

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including the demand for the above alleged rent of $4606.25, as set in its answer. Record page 35 and referred to in the order page 51. * * *"and being fully advised in the premises finds the following." "That said petition of said Debtors is granted." Then the Court rendered judgment on said finding as follows: "That said time heretofore granted to said Debtors in which to redeem said real estate is extended and said Debtors are allowed the same at this time, by paying into Court the sum of $5650.00 as payment in full of said mortgage debt." (Thus the Court hooked up its action with its previous finding of February 17, 1942. Then the Court further adjudged that the payment of the amount of the appraisal and the Debtor was discharged of the balance of said debt above the $5650.00. The sheriff's sale in the Wabash Circuit Court was set aside. (After Mr. Bates heard all of that does it not seem foolish for him to now say the Court was not trying anew said cause and record does not show he made any objection to what the Court was doing)..... 41

(17) It thus appears the District Court says in its order that all these issues were submitted for trial before Judge Slick in the presence and hearing of Mr. Bates. That it will be presumed the latter argued each of them and now he is contending there was no trial of said issues before Judge Slick. But the Court judicially says there was such a trial and that Mr. Bates took part in it. It is implied the Court found it had jurisdiction of the case. The record fails to show that Mr. Bates attacked this finding that the time should be extended and the Debtors allowed to redeem at the appraised value and that the Land Bank take nothing on its claim of rent by assigning that it was not sustained by sufficient evidence. The Creditor has lost its right to attack that finding by not raising

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the question below and it was not before the Court of Appeals. It could not decide a question not before it. So that Court erred in striking down said finding and ordering the Debtors' petition to redeem to be dismissed 44

(18) In 18 it is shown the Court knew he was hearing and finding the facts and deciding this cause, and changed the first erroneous finding to make it conform to the decision of this Court in the Wright case. That was all it did and it should remain that way and be administered according to the provisions of the Act, the decision of this Court..... 45

(19) In 19 the doctrine of Blackstone that: "It is the business of the Judge so to construe the Act as to suppress the mischief and advance the remedy." That is what this Court stated should be the rule in the Wright case—to so construe this remedial Act as to give the "distressed farmer," so as to give the "Debtor the full measure of relief afforded by Congress."..... 46

(7) ARGUMENT

(A) SUMMARY OF ARGUMENT

(1) It is shown the plan of allowing the Creditor to take alleged rent of $4,606.25 in addition to the appraisal was no different between ordering the land sold at public auction and denying redemption and allowing the Creditor to bid $11,775.93 at the sale. Either plan was a device to deprive the Debtors of the right to save their home. Congress never provided for either plan, as against the "Fundamental statutory right to redeem.".. 48

(2) Court of Appeals overlooked that the last hearing only corrected the erroneous first. The Court had made a great mistake and corrected it in the last

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finding and judgment. The first order requiring the rent of $4,606.25 to be paid in addition to the appraisal was in direct conflict with the decision in the Wright case. It had to be corrected so the Court found the time to redeem should be extended and that the rent was disallowed bringing it in harmony with said Supreme Court decision.. 48

(3) The case was still pending. The land had not been sold. Hence, the Court could correct the awful mistake. The Creditor did not attack the finding. It stands. Its failure to assign error as to the finding that it was not sustained by sufficient evidence was fatal. The question was not before the Court. The Court could not exercise a power it did not possess, or decide a question before it. It had to approve this finding. Holding that this finding to redeem was void had no effect on it. It still stands in favor of the Debtors..... 49

(4) The Court of Appeals could not challenge the finding that the Debtors should redeem unless raised below. It could not raise the question..... 49

(5) The Action of the Creditor conferred jurisdiction on the Court to correct the error of trying to overrule the Wright case 50

(6) The Creditor consented to make this correction and try the case over again by filing its cross-action to require the Debtors to pay $4,606.25 of rent. (R. 35) 50

(7) The Court had the inherent power to correct its awful mistake in trying to overrule the decision of this Court of December 9, 1942, several months preceding its first order of February 17, 1942. That would never do to allow a District Court to to overrule the Supreme. To contend that such an order should be allowed to stand and that the Court did not have the power to correct is absurd and unreasonable 50

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(8) (9) (10) Black on judgments, Remington on Bankruptcy and the Ives case all hold the Court was open and this mistake could be corrected even out of time. There should be no tenderness against such a deadly order. It should be blotted out even after time 51

(10) This Act does not provide that the Court of Appeals can set aside this order allowing redemption unless it was attacked in the trial Court below.... 51

(B) ARGUMENT PROPER

(2) We quote from Brandenburgh—a Court of Equity will deal with the rights of the parties upon their merits and not be controlled by strict legal forms. Then listen to Blackstone when he says: "And it is the business of the Judges so to construe the Act as to suppress the mischief and advance the remedy." That means what the Supreme Court states in the Wright case: "This Act provided a procedure to effectuate a broad program of rehabilitation of distressed farmers faced with the disaster of forced (sheriff's) sales and an oppressive burden of debt." The Court of Appeals should have lifted that burden..... 52

(5)-(6) Instead of that it denied relief from the awful burden of debt and ordered the land sold in effect at $11,775.93. That meant the Debtors must bid "Good Bye" to their Home. Even though this Court says the Creditor had no "Constitutional Claim to more than that" ($5650.00). That the Court of Appeals denied redemption and in effect approved a public sale of the land at which the Creditor will be allowed to bid its debt of $11,775.93. That would kill redemption as dead as a "door nail." No Court should ever put its stamp of approval on such an unjust plan as that..... 53

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1943

In the Matter of James N. Roney and Marguerite C. Roney, *Debtors,* James N. Roney and Marguerite C. Roney, *Petitioners,* vs. The Federal Land Bank of Louisville, Kentucky, *Respondent.*	No. ———

Debtors' Petition for Review by Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit and Brief in Support Thereof.

To Honorable Harlan Fiske Stone, the Chief Justice and Associate Justices of the Supreme Court of the United States:

I

PRELIMINARY

(1) Your petitioners, James N. Roney and Marguerite C. Roney, husband and wife, respectfully show:

That they are aggrieved by the opinion and judgment of the United States Circuit Court of Appeals for the Seventh Circuit, entered December 2, 1943.

(2) That the judgment of the trial Court which preceded said appeal was rendered in the United States District Court for the Northern District of Indiana, Fort Wayne Division by Hon. Thomas W. Slick, Judge of said Court, in which he allowed said Debtors to redeem their Home farm by paying into said Court the appraised value of $5650.00, previously fixed by said Court. That the Creditors appealed from said judgment to said Circuit Court of Appeals. In the latter said Court reversed said judgment below, and directed that the Debtors' petition to redeem should be denied and that said real estate should be ordered sold at public auction and that the Creditor be allowed to bid its debt of $11,775.93 at said sale and thereby required the Debtors to pay said last named sum for $5650.00 worth of land.[1]

(3) The petitioners present their petition to this Court and ask for a writ of certiorari requiring said Court of Appeals to send up the record in said cause for review and pray that the errors therein be corrected and that said judgment, denying them the right to redeem their Home be in all things reversed and set aside.

(4) That this petition will be accompanied by a transcript of the printed record in the case, including a printed record of the proceedings in said Circuit Court of Appeals after it reached said Court down to the close of said Appeal in said Court, Duly certified by the Clerk of said Court.

II

SUMMARY STATEMENT OF THE MATTERS INVOLVED

(1) This is a proceeding under Section 75 of the Act

[1] The decision of the Court of Appeals is found in the Record page 70-75.

of Congress of March 3, 1933, relating to Agricultural Compositions and Extensions as amended by adding a new Subsection (s) August 28, 1935. (11 U. S. C. A. 203 (s)). Designated as The Frazier-Lemke Act.

(2) The Supreme Court in Wright vs. Union Central Life Ins. Co. (December 9, 1940) (311 U.S. 273) defined the Act as follows:

> "This Act provided a procedure to effectuate a broad program of rehabilitation of distressed farmers faced with the disaster of forced sales and an oppressive burden of debt."

(3) It may be suggested that the farmers are not distressed now. Suppose they are not. But go back to 1933 and 1935, and their condition was such that the papers were full of notices of sheriff's sales of farm land and thousands of them would have lost their homes had Congress not enacted this remedial legislation. Even with this legislation, in some Counties in Indiana, 20 per cent of the land owners have lost their homes.[1]

(4) Then the bitter fight made by the Loan Companies in the Courts against this legislation cost thousands of farm homes. The case at bar is one that came up when farmers could not make enough to pay the taxes on their land, and it is still pending. The books are full of cases where the Inferior Federal Courts had refused to give the "distressed farmers" the benefits of these Acts. How unreasonable. They held that the Acts were unconstitutional, that Congress had no power to enact a law extending the period to redeem for three years, that the Debtors had not filed their petitions in good faith and that there was no reasonable hope that they could ever rehabilitate

[1] It is estimated the doors were closed against a half million farm home owners.

themselves within the three-year period and other technical objections which threw the "distressed farmers" out of Court and caused them to lose their homes.

(5) Not wishing to find any fault with Congress—(It is blamed for everything which goes wrong), but it had not provided any way to obtain the money with which to redeem. For without the aid of Congress they were as helpless as a child. That prior to September 2, 1942, when they were ready to pay the $5650.00 into Court in this cause, it was impossible to procure a farm loan from the Banks or Loan Companies. Their doors were closed against them to punish them for taking the benefits of this Act of Congress. These "distressed farmers" found themselves between two millstones. True, they had a law and decision of the Supreme Court in the Wright case which allowed them to redeem their home at its appraised value of $5650.00, but their Government had not provided a way to get the money with which to pay the appraised value.[1] Without that the law was largely a "dead letter" until land went up and the Banks and Loan Companies began to open their doors for farm loans. Hence, the Petitioners struggled along (but many gave up the ghost) rather than resort to litigation in distant Federal Courts.

(6) The history of a case is a part of the case and hence these facts are necessary to explain why the District Court had to extend the time so as to give the Debtors more time than was first given in which to enable them to save their Home. (It will not be disputed but that the father had lived all of his life thus far, 74 years on this farm.)

(7) The rules of construction of a law are an impor-

[1] As a policy to resist this Act of Congress the Loan Companies refused to loan when the "distressed farmer" sought to obtain relief under this Act of Congress.

tant part of the law. There are two general rules: One a strict construction and the other a liberal. However, the paramount rule is the intention of the lawgiver must control. As old as the law itself is the rule: "That the intent of the Lawgiver is the law." A Standard Author 59 Corpus Juris 948-952 defines the latter rule as follows:

> "(a) As the intention of the legislature embodied in a statute, is the law, the fundamental rule of construction, to which all others, are subordinate, is that the Court shall, by all aids available, ascertain and give effect to the intention of the maker."

(8) How should this remedial Act be construed to give relief to the "distressed farmers faced with the disaster of forced sales and an oppressive burden of debt?" Listen to the language of the Supreme Court.

> "Safeguards were provided to protect the rights of secured creditors, throughout the proceedings, to the extent of the value of the property. John Hancock Mut. L. Ins. Co. vs. Bartels, supra (308 US at pp. 186, 187, 84 L ed 180, 181, 60 S Ct. 221, 41 Am Bankr Rep (NS) 296); Borchard v. California Bank, supra (310 US at p. 317, 84 L ed 1225, 60 S Ct 957, 42 Am Bankr Rep (NS) 596). There is no constitutional claim of the Creditor to more than that. And so long as that right is protected the creditor certainly is in no position to insist that doubts or ambiguities in the Act be resolved in its favor and against the debtor. Rather, the Act must be liberally construed to give the debtor the full measure of the relief afforded by Congress. (John Hancock Mut. L. Ins. Co. v. Bartels, supra; Kalb v. Feuerstein, 308 US 433, 84 L ed. 370, 60 S Ct. 343, 41 Am Bankr Rep. (NS) 501, supra), lest its benefits be frittered away by narrow formalistic interpretations which disregard the spirit and the letter of the Act."
>
> Wright Case, 311 U.S. 273.

(9) Note the Creditor is to be protected (a) "throughout the proceedings to the extent of the value of the property." "The supreme law of the land" has brought the debt down to that." No difference what his debt might be he was to have only the value of the property—not a penny more. (b) "There is no constitutional claim of the creditor to more than that $5650.00." The Court of Appeals overlooked that. It denied the Debtors the right to redeem on that basis. It adopted a plan clear outside of the Act of Congress which denied the Debtors the benefits of the Act by requiring them to pay $11,775.95 for $5650.00 worth of land. It made it utterly impossible to obtain a loan on that basis and gave the land to the Creditor.[1]

(c) The Court must give the benefit of the doubt in favor of redemption.

(d) The Act must be liberally construed to give the Debtors "the full measure of relief afforded by Congress" and this must be done "lest its benefits be frittered away by narrow formalistic interpretations which disregard the spirit and the letter of the Act."

(e) There never was a more careful admonition given by a Superior Court to a lower Court.[2] We will show the Court of Appeals disregarded these rules and adopted narrow-minded technical rules which frittered away these benefits "by narrow formalistic interpretations which disregarded the spirit and letter of the Act."

Wright Case, 311 U.S. 273.

---

[1] In allowing the redemption Creditor to bid its dead debt above the value of the land, meant financial death to the farmer. The District Court saw that peril and the Court of Appeals should have approved its action. But it "turned by on the other side."

[2] This instruction was given to the Court of Appeals but it did not heed it. It was instructed that nothing should be allowed to stand in the way of allowing the Debtor to redeem his home. That it should so construe the Act so as to allow him to keep his Home.

III

STATEMENT DISCLOSING THE BASIS UPON WHICH IT IS CONTENDED THAT THE SUPREME COURT HAS JURISDICTION TO REVIEW THE JUDGMENT OF THE COURT OF APPEALS

(1) The petition for a rehearing was denied January 3, 1944, and hence the time in which to perfect this appeal began to run on said date.

> "Section 240 (a) of the Act of May 13, 1925, defining the jurisdiction of the Supreme Court provides that in any case in a Circuit Court of Appeals it shall be competent for the Supreme Court of the United States upon the petition of any party thereto to require by certiorari that the cause be certified to the Supreme Court. Rules Appendix p. 3 Subsection 8 (a) of said section 240 provides that application for said writ may be filed within three months after the entry of judgment and that for good cause said time may be extended not exceeding 60 days by a Justice of said Court." Rules Appendix p. 7.

(3) "Notwithstanding these statutory provisions a review on writ of certiorari is still a matter of sound judicial discretion and will be granted where there are special and important reasons therefor.

Paragraph 5, Rule 38, Supreme Court, pp. 31-32."

This covers the "proceedings in bankruptcy" and "controversies arising in proceedings in bankruptcy to review" the same.

"SEC. 24 JURISDICTION OF APPELLATE COURTS.—a. The Circuit Courts of Appeals of the United States and the United States Court of Appeals for the

District of Columbia, in vacation, in chambers, and during their respective terms, as now or as they may be hereafter held, are hereby invested with appellate jurisdiction from the several courts of bankruptcy in their respective jurisdictions in proceedings in bankruptcy either interlocutory or final, and in controversies arising in proceedings in bankruptcy, to review, affirm, revise, or reverse, both in matters of law and in matters of fact."

"c. The Supreme Court of the United States is hereby vested with jurisdiction to review judgments, decrees, and orders of the Circuit Courts of Appeals of the United States and the United States Circuit Court of Appeals for the District of Columbia in proceedings under this Act in accordance with the provisions of the laws of the United States now in force or such as may hereafter be enacted." (Sec. 24 Chandler Act. or Sec. 47 (11 U. S. C. A. (c)).

The record discloses that the judgment herein involved more than $500.00.

IV

THE QUESTION PRESENTED

Let us examine the record and see what the questions presented are:

(1) On February 17, 1942 the Court entered an order fixing the value of the land at $5650.00 and gave the Debtors 90 days in which to redeem. The Court also ordered the Commissioner to determine the rent due, which had been fixed at 2/5 of the crops. It ordered the land sold at public auction and gave the Creditor the right to bid its $11,775.95 debt at said sale. (R. 27-28.)

(2) The redemption money was not paid into Court at the end of the 90 days but the Creditor took no steps

to sell the land. The Creditor acted as though it had abandoned its sale set out in the order.

(3) There was nothing further done until September 2, 1942. Then the Debtors filed their petition to redeem the land at the $5650.00.

(R. 28) (Pet. R. 28-31.)

The petition set out the order of February 17, 1942. That said Debtors are now ready to pay said sum into Court. The Bank of North Manchester had opened its doors to make farm loans and had agreed to refinance the debt on the basis of its appraised value. That they had paid all of the taxes on the land and that the sum of $1000.00 would be required to repair the buildings, drains and fences on said land, the obligation of which was assumed by them. That they would make said repairs at their own expenses. (R. 28-30.)

(4) Wherefore they prayed the Court to allow them to pay said $5650.00 into Court, to enter an order herein turning over to them full possession and title to said land, free and clear of said mortgage debt and that said sum pay the whole mortgage debt and that they be discharged from the balance thereof. (R. 30-31.)

(5) The Creditor filed a motion to strike out the petition because it had not been filed in time and that no appeal had been taken from said order of February 17, 1942. (R. 31.)

(6) The Creditor ran away from the first order and took issue with the Debtors on the petition and denied that they were ready to pay said $5650.00 into Court. That it also denied that said Debtors had paid the taxes on said land and denied that the $1000.00 would pay for the repair of said buildings, ditches and fences on said

real estate. The Creditor also took issue with the Debtors that they should not be allowed to pay said $5650.00 on said basis. It denied the right of said Court to make an order that said $5650.00 shall pay the whole mortgage debt. (R. 34-35.) (It will be noticed that said Creditor did not plead res judicata or stand by said first order at all but answered the Debtor's new petition on its merits. This action of the Creditor set aside the first order or opened it up to the new issues raised by said new petition. It did not treat the first order as final.)

(7) Then the Creditor jumped over the fence and filed a cross-petition against the Debtors to recover $4606.25 of rent it claimed was due and should be paid by said Debtors. (R. 35, Paragraph II.) This rent was not set up at the previous trial and order of February 17, 1942. It was an entirely new cause of action and set aside said first order and took away the finality of said first order and the Creditor thereby abandoned its first order for a public sale, and made a new cause of action against the Debtors and sought to recover a judgment against them for said sum of which they did not owe a penny. All they owed and were required to pay to redeem the land was, according to the decision of the Federal Supreme Court in Wright vs. Union Central, 311 U. S. 273, said appraised value of $5650.00 and not a penny more.

(8) The Creditor filed seven more pages of answer to said Debtors' petition, all of which were to the effect that the Debtors should pay $4606.25 of rent in addition to the $5650.00, and that it wanted the Court to order the real estate sold at public auction and allow the Creditor to bid its debt of $11,775.95. (R. 18.) It saw that this was the easiest way to get this land from the Debtors. This meant denying redemption and turning the land over to

the Creditor, as the Debtors could not (no more than they could fly that moment) ever get a loan on said basis of having to pay $11,775.95 for $5650.00 of land. It will be shown later that the Creditor had stipulated that was all the land was worth.

(9) The Debtors' petition to redeem the land at its appraised value and the Creditor's answers "of many colors" were set for hearing before Judge Slick on September 15, 1942. (R. 43.) All of these issues were before the Court. When a case is set for hearing before a Court it does not go in piecemeal but every issue and question raised goes before the Court and it hears and determines—not a part of the questions—but all of them.

(10) It is the theory of the Creditor that the time to redeem under the order of February 17, 1942, ended May 17, 1942. That the Court had no power to extend it beyond said date. The Creditor had neglected to enforce a forfeiture on that date and allowed the matter to run along until September 2, 1942, without any action on the part of the Creditor, which amounted to an acquiescence in the extension of the time.

(11) After it goes to trial on the new issues it can not afterwards claim that the original order stands. No, it is superseded by the last judgment or the new issues.

The Creditor contends that the Debtors had no right to file the petition to redeem after May 17, 1942. It overlooked that the Creditor took the right to appear and file its answer to said petition and set up a new claim of $4606.25, and demanded a judgment against the Debtors, as late as September 5, 1942. (R. 31.) If the Creditor had the right to appeal out of time after May 18, 1942, and bring in a new claim of $4606.25 on September 5, 1942, and de-

mand judgment for the same, then the Debtors had the same right to file their petition out of time.

(12) When it brought in the new action, it opened up the former judgment of February 17, 1942, and gave the Court the same power to hear the petition to redeem as it had to try the new question of rent. The Creditor could not open the judgment and extend the time to hear its claim and deny the same right to the Debtors.

(13) We now come to the hearing and trial of the whole case on September 15, 1942. (R. 43.)

It is elementary that the law indulges every presumption in favor of the regularity of the finding and judgment of the Court. The District Judge heard the case and made as the law provides a special finding of facts and his conclusion of law thereon.

(14) The finding and judgment on the main question is as follows: "This cause coming on to be heard on the petition of said Debtors for an extension of time in which to redeem the real estate in said cause.") "And the Court having read the verified petition of the Debtors (and the Creditors answers were before the Court) and heard the argument of Counsel and being fully advised in the premises finds the following: (R. 43.) (It will be implied that the Court was advised of the stipulation of the parties which reads as follows:

"That said Debtor does not have the financial ability to rehabilitate himself and redeem said land on the basis of the amount of said mortgage debt which is now the sum of $11,775.95 within the time of said Moratorium.

"That said Debtor has the financial ability and funds necessary to redeem said land and to rehabilitate himself and to reorganize himself provided he is allowed to re-

purchase the real estate at its value, which value is now as found by the Special Master in the sum of $5650.00. 1/22/40.

John S. Grimes, Attorney,
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224 E. Broadway, Louisville, Kentucky.

Samuel E. Cook,
Attorney for James E. Roney,
Debtor, Huntington, Indiana."
(Transcript Pages 2 and 3.)

Then the Court further found: "That said petition of said Debtors to redeem is granted" (R. 43.)—"It is therefore ordered, adjudged and decreed that said time heretofore granted to said Debtors in which to redeem said real estate (this was the 90 days in the order of February 17, 1942) is extended and said Debtors are allowed to redeem the same at this time, by paying into Court the sum of $5650.00, as payment in full of said mortgage. (R. 42-43.)—Therefore the full possession and title to said real estate is now ordered turned over to said James N. Roney and Marguerite C. Roney, husband and wife, free and clear of said mortgage debts and of all of the other obligations of said Debtors which real estate is more particularly described as follows:" (R. 43-44.) (H. I.)

"It is further ordered and decreed that the payment of said redemption money of $5650.00 shall pay the whole of said mortgage debt and that said Debtors are hereby discharged from the balance of said debt and said judgments foreclosing said mortgages of said Creditor in the Wabash Circuit Court over and above said $5650.00 and said judgments and mortgages herein, in said Court are declared satisfied in full." (R. 45.)

Also, "That the Sheriff's sale of said real estate in the Wabash Circuit Court on said judgments, foreclosing said mortgages are hereby set aside and held for naught. That the Certificate of sale and Sheriff's deed, if any there be, is also set aside and held for naught. And if any deed has been issued to said Creditor on said Sheriff's sale, the same is hereby set aside and held for naught.

Dated September 15, 1942. Thos. W. Slick, Judge of the District Court of the United States for the Northern District of Indiana, South Bend Division." (R. 45-46.)

True, this petition had been filed out of time but the action of the Creditor in taking issue on the new petition and the action of the Creditor in bringing the new action as to the rent of $4,606.25 in its answer in the proceedings in the new petition. (R. Par. II, 35.) It put this rent in the mill and it had to be ground out. Then the action of the Debtors in bringing into the new petition the $120.00 to cover taxes paid by the Creditor and the Debtors' showing that they had paid all of the taxes on the land in the sum of $853.50, made an entirely new case before the Court. The Creditor can not take issue on these new questions and try them in Court and then say the Court was trying the old questions in the first trial and was not trying these new questions. The Court heard the evidence in the new case and rendered judgment. The Creditor appealed from this last judgment and did not appeal from the first. The new judgment supersedes the old one. The Creditor recognized the new judgment by appealing from it. Consider the notice of appeal in a new case. (R. 46-47.) It filed its appeal bond in the new case. (R. 48-49.) Consider its designations of parts of the record to go into the transcript on appeal. (R. 53.) It called for its answer as follows:

"(5) Answer of the Federal Land Bank of Louisville to the Debtor-Bankrupts petition to redeem the land at the appraised value filed on or about September 5, 1942." (Query! What was it answering on the merits, if it was not before the Courts?) That is what the Court was trying. The Court referred to the first order by using the word time—"heretofore granted to said Debtors, in which to redeem said real estate." (R. 43-44.)

(15) This was not an idle ceremony of the Court. It was a solemn finding that under all of the circumstances of the petition to redeem was granted and judgment was entered on said finding. It was a judgment "founded on a rock".

(16) The Creditor appealed at once to the Court of Appeals. Did it raise any question against this finding of fact as to the right to redeem? None whatever. To question this finding the Creditor in taking its appeal would have to assign an error that this finding i. e.: "That said petition of said Debtors to redeem is granted" (R. 43)—is not sustained by sufficient evidence, and then take the evidence up to the Court of Appeals. This rule is as old as the law itself and is so well-settled that no citation of Federal or local State law need to be cited. And also, that the second finding: "That————said time heretofore granted to said Debtors, in which to redeem said real estate is extended and said Debtors are allowed to redeem the same at this time, by paying into Court the sum of $5650.00 as payment in full of said mortgage debt. ———" (R. 43-44.)

(17) An examination of the Creditor's assignment of error or "Statement of ——— Points," which takes its place, under the new Rules, will not show the Creditor ever assigned as error or stated as a point that this finding

was not sustained by sufficient evidence." (R. 55.) At any rate the record does not show that the Creditor ever took up any evidence on that point. The record fails to show the Creditor raised that question in a motion for a new trial or in any other way. It is as "silent as the tomb" on that question. Why did the Court of Appeals fail to point out that defect in the record, that the question had not been raised in the trial and hence it had no power to deny the "Debtors' petition to redeem." In doing that it set this finding aside—threw it "out of the window—." Such action is held by the Courts as "arbitrary and capricious," and null and void.

(18) The Creditor's object in appealing from the judgment of September 15, 1942, was to recover the alleged rent of $4606.25 and to "appoint a Trustee to sell the real estate," and bid its debt at said sale and thereby make redemption utterly impossible. The Appellants Point (R. 47) also complain that "the Court in overruling the motion of the Federal Land Bank for an order appointing a Trustee and directing a sale of the real estate." (R. 55.)

(19) Turning back to said motion on (R. 40), it will be found that it has included in that motion the following: "The Creditors have the right to bid at said sale up to the amount of their claim." (R. 18.) A nice scheme to make it impossible to redeem. On one plan it wanted the following:

Appraisal	$5650.00
Alleged rent	4606.25

$10,156.25 for $5650.00 worth of land.

The other plan is as follows: "That the Debtors' petition to redeem the land at $5650.00 should be denied and that the petition of the Creditor that the land be sold at public auction and that the Creditor be allowed to bid at

said sale, the amount of its debt ($11,775.93.)" (R. 18.) Again, $11,775.93 for $5650.00 worth of land. That makes the Act no law at all for the relief of distressed farmers. He asked "for a fish and was given a serpent." He asked "for bread and was given a stone."

(20) It is plain that such plans meant the loss of their Home, every time. The Court could see that this would be the result. The Court of Appeals in denying the right to redeem at the value of the land and providing for further proceedings, in effect means it intended a sale like the Creditor prayed for above i.e.: "—That the land be sold at public auction and that the Creditor be allowed to bid at said sale the amount of its debt, $11,775.95." (R. 18.) That is what the order made herein reversing the judgment of the District Court means. The Court did not heed the admonition of this Court in the Wright case.

(21) What was the rest of the order? The taxes are a lien on the rent. Hence payment of the taxes pays the rent. Then the Court found the taxes on the land were all paid. That paid all of the rent. So the Court refused to allow the $4606.25. When it got the appraised value of the land it was not entitled to a penny more. Hence this surplus rent belonged to the Debtors. The Supreme Court held in Wright vs. Union Central, 311 U. S. 273, that the Creditor has "no Constitutional claim," to more than the appraisal of the land.

(22) It will be noticed that the Creditor in presenting its deadly claim of $4606.25 as rent for the land in its answer paragraph II (R. 35) in addition to the appraisal shows that it is a dispute solely between the Debtors and itself. That it is not a dispute between contesting Creditors. Bear in mind the Creditor here is not in the class of general creditors, those holding secondary liens. It is the

first mortgage holder. The Act treats it in a class of its own and not in the others named above. The Court in the Ezell case which will be discussed presently said, "The Act is not at all clear" when the controversy is between Creditors, other than the Creditor holding the first mortgage lien. When it gets the value of the land it ceases to be a creditor. It has no "judgment over" or "deficiency judgment," its claim has been satisfied and it has no further interest in the rent and goes out of the case. Thus we will not need to notice any contests only as are between the first lien holder and the Debtors.

(23) Let us notice the decision in re Ezell District Court W. D. Missouri Central Division, April 30, 1942. (45 F. Supp. 164.)

It holds in substance that as between the First Mortgage lien holder and the Debtor, like here: "The Debtor then paid into Court for the use of the Creditor the full amount of the re-appraised value, to-wit: "$6000.00 whereupon an order was made vesting title in the farm to Mr. Ezell free and clear of all incumbrances."

Exactly as here: "The Debtor contends that the payment of the full appraised value of the farm to the Creditor is all that the statute requires him to do in order to obtain full title to the property. Like here: "The Creditor contends that the rentals paid to the Conciliation Commissioner" —were not payments upon the principal of the obligation and should be paid over to the Creditor" —"but should be considered as payment by the Debtor for the use of the premises which he retained—." The Court concludes: "The full amount of the re-appraised value of the property was paid by the Debtor. The Creditor has therefore, received all that it may, under the statute, all that it may demand as a prerequisite to

the transfer of the unencumbered title to the Debtor. The unexpended funds should, therefore, be returned to the farm-debtor." The fact that the rental was paid to the Commissioner there and was not so paid here, makes no difference. The principle is the same.

It follows that as between the first mortgage lien holder and the Debtor, the rent went for taxes and up keep of the property and when the Debtor paid the appraisal of the land into Court, the Creditor had no further interest in the case nor in the rent. To repair the buildings etc., that fell upon the Debtors. They took the land back with the obligation to pay for the repairs needed on the land and building fences, ditches, etc. It was their own land.

(24) The following question was not presented: The Creditor failed to assign as error that the findings of the Court, that the Debtors' petition to redeem was granted, was not sustained by sufficient evidence and also failed to take the evidence up in its appeal.

(25) There is another line of cases which hold that the District Court had jurisdiction of the question of redemption, even after May 18, 1942, on the ground that bankruptcy proceedings are—at all times open and any order made may be reexamined and vacated where the rights of third persons have not intervened. When the District Court extended the time to redeem as set out above, the proceedings were still pending in the District Court and was still litigation between the original parties. These cases will be presented in the supporting Brief which will be annexed to this petition herein.

V

THE REASONS RELIED FOR ALLOWANCE OF WRIT

1. The first reason why the Writ should be allowed is as follows:

The District Court heard and tried the whole case on September 15, 1942. It found as a fact—"And (the Court) being fully advised in the premises finds the follow—(ing): That said petition of said Debtors to redeem (the land) is granted—and that the Federal Land Bank take nothing by its claim for rent as set out in its answer herein." (H. I.) (R. 43.) "And its motion to strike out and appoint a Trustee to sell said real estate is denied." (H. I.) To each of which the Creditor excepted. (R. 43.) That does not raise any question as to said findings. It failed to attack the finding—"that said petition———to redeem is granted," and the finding: that said time heretofore granted to said Debtors, in which to redeem said real estate is extended and said Debtors are allowed to redeem the same at this time, by paying into Court the sum of $5650.00 as payment in full of said mortgage debt" was not attacked. To raise any question against them it should have stated that said findings are not sustained by sufficient evidence and then take up the evidence on that fact as part of the appeal to the Court of Appeals. Merely excepting raised no question against facts, and did not raise any questions that they were not sustained by sufficient evidence.

Since there was no question raised in the trial Court against the facts found by the Court and the judgment thereon in the last order of September 15, 1942, the action of the Court in granting the Debtors the right to redeem and in extending the 90 days in the previous order, hooked

up the last proceedings with the first entered on February 17, 1942. Those facts stand in favor of the Debtor like a "stone wall." For this reason the Court of Appeals had no power to set aside these findings of fact and hold them false and it could not disregard them and dismiss the Debtors' petition to redeem. This action of the Court of Appeals is in conflict with Rules of evidence in the Federal and State Courts and is incurable error. This remedial Act cannot be carried out except by reversing the judgment of the Court of Appeals.

2. The second reason is as follows:

The Creditor entrapped itself by taking issue on the new petition and by a cross-action seeking to get a judgment against the Debtors for $4,606.25 of alleged rent. The Creditor was not satisfied with the appraised value and its admitted value as set out in the stipulation of $5650.00. Like "Micawber—its plate was always up for more." It saw a "shadow" of this enormous sum and "grabbed for it." In that way it in effect set aside the first order. It met this new petition on the merits as follows:

"PARAGRAPH II

> "Further answering herein the Bank states that the rental value of said tracts of land consisting of 144-1/4 acres is not less than $5.00 per acre per year; that rental is due and unpaid for the years 1937 to 1941 (both inclusive) in the aggregate amount of $3,606.25; that the Debtor-Bankrupt has also had the use of said land during 1942 and if allowed to redeem, rental should be paid for that year in amount of $1,000.00." (R. 35.)

This made a new case, and the findings and judgment therein superseded the first order. The Creditor ventured too far on "thin ice."

3. The third reason is as follows:

The action of the Court of Appeals in refusing to allow the Debtors to redeem at the appraisal and in effect allowing a public sale with the right to bid its debt of $11,775.93, is in conflict with the decision of this Court in Wright vs. Union Central 311 U. S. 273 which held the following:

> "Safeguards were provided to protect the rights of secured creditors, throughout the proceedings, to the extent of the value of the property. ——— There is no constitutional claim of the creditor to more than that. And so long as that right is protected the creditor certainly is in no position to insist that doubts or ambiguities in the Act be resolved in its favor and against the debtor. Rather, the Act must be liberally construed to give the debtor the full measure of the relief afforded by Congress." (P. 168-169.)

The decision of the Court of Appeals is in conflict with the above statement of the law.

The right to redeem was superior to a public sale of the land and redemption should have been allowed rather than an order of public sale. The latter is subordinate and must give way when the Debtor can raise the money to redeem.

4. Another reason.

Then the Court adds in substance: The "distressed farmer" is not on an equality with the Loan Company in these words:

> "Then the Debtors' rights under the first proviso would be either dependent on the outcome of his race of diligence with a Creditor for which customarily he would be fully equipped."
> (311 U. S. 273.)

This judgment conflicts with that. Citing Kalb Case 308 U. S. 433.

5. ANOTHER REASON.

To terminate the proceedings by a public sale is a harsh remedy. It is subordinate to giving the Debtor every possible chance to save his home and should not be resorted to only when all other remedies are exhausted. If there is financial ability to redeem, that should have preference over a forfeiture and an order of public sale. In other words, as long as the case is still before the Court undisposed of and is still litigation between the original parties and the contest is between a home owner who has raised the money to redeem and a Creditor who is demanding a public sale and in this case also demanding the right to bid its whole debt of $11,775.93 and thereby ask the Court to make such a harsh order as that when in his own conscience the Court knows that such an order will defeat the intent of Congress and make redemption impossible. That it will not save a farm home but lose one. That in a contest, like that, the Supreme Court means the Debtor should have the preference, even though he has been slowed up, because the Banks and Loan Companies closed their doors against him for a time. A boy ten years old knows that his father would always redeem the home for his family, if he could get the loan. The action of the Court of Appeals did not heed this, hence its decision conflicts with it. (Wright vs. Union Central, 311 U. S. 281.) (85 L. Ed. 184-189.) We cite the Wright case in support of the above statement of the law.

Special attention is called to the statement of the Court on the powers of the District Court in the opinion in the Wright case 280-311, U. S. P. 281. (We have no official U. S. Repts in our Court Library here.)

The part of the opinion we are citing is as follows: In the 85 L. Ed. pages 280-281, beginning with the word—"Respondent" and ending "Sec. 75—(3)". In the official edition it begins with "Respondent" page 280.

These decisions of the Court of Appeals is in direct conflict with the above statement of the law and also the Wright case.

Here is part of what the Court said:

> "—to hold that the court has the discretion to deny or to grant the debtor's right to redeem at the reappraised value or at the value fixed by the court, dependent on general equitable considerations, would be to rewrite the Act, so as to vest in the court a power which Congress did not plainly delegate." (Wright vs. Union Central, 311 U. S. 273, at page 281.)

VI

SUPPORTING BRIEF

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1943

No. ———

RUFUS MESHBERGER AND LELIA B. MESHBERGER,

Husband and Wife,

Debtor,

vs.

THE FEDERAL LAND BANK OF LOUISVILLE, KENTUCKY,

Respondent.

DEBTORS' BBIEF IN SUPPORT OF PETITION FOR CERTIORARI

To THE HONORABLE HARLAN FISKE STONE, CHIEF JUSTICE, AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES

Comes now the Debtors in said cause and file with their petition for certiorari the following brief in support thereof:

(1) The opinion in the cause is found in Transcript Record page 70 to 75 F. (2d).

(2) A CONCISE STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED.

"Section 240 (a) of the Act of May 13, 1925, defining the jurisdiction of the Supreme Court provides that

in any case in a Circuit Court of Appeals it shall be competent for the Supreme Court of the United States upon the petition of any party thereto to require by certiorari that the cause be certified to the Supreme Court. Rules Appendix p. 3 Subsection 8 (a) of said section 240 provides that application for said writ may be filed within three months after the entry of judgment and that for good cause said time may be extended not exceeding 60 days by a Justice of said Court." Rules Appendix p. 7.

"(3) Notwithstanding these statutory provisions review on writ of certiorari is still a matter of sound judicial discretion and will be granted where there are special and important reasons therefor.

Paragraph 5, Rule 38, Supreme Court, pp. 31-32."

This covers the "proceedings in bankruptcy" and "controversies arising in proceedings in bankruptcy to review" the same.

"SEC. 24 JURISDICTION OF APPELLATE COURTS.—a. The Circuit Courts of Appeals of the United States and the United States Court of Appeals for the District of Columbia, in vacation, in chambers, and during their respective terms, as now or as they may be hereafter held, are hereby invested with appellate jurisdiction from the several courts of bankruptcy in their respective jurisdictions in proceedings in bankruptcy, either interlocutory or final, and in controversies arising in proceedings in bankruptcy, to review, affirm, revise, or reverse, both in matters of law and in matters of fact."

"c. The Supreme Court of the United States is hereby vested with jurisdiction to review judgments, decrees, and orders of the Circuit Courts of Appeals of the United States and the United States Circuit Court of Appeals for the District of Columbia in proceedings under this Act in accordance with the provisions of the laws of the United States now in force

or such as may hereafter be enacted." (Sec. 24 Chandler Act, or Sec. 47 (11 U.S.C.A. (c))

The record discloses that the judgment herein involves more than $500.00.

(3) A CONCISE STATEMENT OF THE CASE AND THAT WHICH IS MATERIAL TO THE CONSIDERATION OF THE QUESTIONS PRESENTED:

We take it that this is what is wanted under this head. That which is related to the issues raised and questions not raised. We must not overlook that the big question in the case at Bar was not raised below, hence not presented. The Court could not consider a question not raised below nor taken up in the appeal. In other words the Court could not consider a question not before it. If it did, its opinion would be only obiter dictum. (In re Denny, 99 F. (2d) Pamphlet Dec. 26, 1938-712.)

(4) WHAT ARE THE QUESTIONS OR ISSUES PRESENTED AND HOW SHOULD THE COURT CONSIDER THEM? On that we will try to throw light.

(a) The court heard the case on February 17, 1942 (R. 27-28.) Finding and judgment same date. The Court gave everything to the Creditor. It was certainly a great day for the Creditor. Instead of applying this Act to aid the "distressed farmer" in redeeming the land, it was used for the very opposite. What did it provide for? The Court found the land was worth $5650.00 and the Debtors were allowed to pay that to redeem. (R. 27.) But the Court did not stop at that. It added the Debtors must also pay the Creditor the alleged rent of $4606.25. (R. 28.) That would be $10,256.00 for $5650.00 worth of land. The Court knew they could never finance it on that basis. That is not all of the absurd order. It then provided that if they did not pay the $10,256.00 within 90 days a

Trustee was appointed and ordered to sell the land at public auction and allow it to bid its debt of $11,775.93, (R. 18.) at the sale. The Act contains no provision to end a proceeding in that way.

(b) Just nine months and 15 days before the date of this wiid order the Federal Supreme Court in Wright v. Union Central, 311 U. S. 273 had held that all the Debtor needed to pay to redeem the land was to pay the appraisal value of the land—$5650.00 and not a cent more. How will this Court treat that? That is pay $4606.00 more than the land was worth. Such a construction would defeat this Act and make it a farce and a sham. As sure as the sun-rises that part of that judgment was utterly null and void. The idea of a Federal District Judge undertaking to overrule this Great Court—The Balance Wheel of our Republic—The Ultima Ratio. This was an extraordinary situation that had to be met with, an extraordinary remedy or this farm Home would be lost.

(c) "There is no wrong without a remedy." What should be the remedy here? It appears that in such an emergency this Court should consider the following as applying to the question: Let us quote:

> "Every Court possesses inherent power to vacate entries in its record of judgments, decrees or orders rendered or made without jurisdiction, either during the term at which the entries are made or after its expiration." (Vol. 1 Black on Judgment 1891.)

This applies here. If it does not have that power when a mistake has been made as was done here—if its hands are tied, if technicalities paralyze its arm, then it can not do justice. "Let Justice be done though the Heavens fall." Nothing can be allowed to stand in the way. Nothing can restrain a Court of Equity from doing "Right or Justice" and to correct its own record.

(d) The Court should consider this principle as applying to causes in Bankruptcy: Brandenburgh on Bankruptcy Fourth Edition Sec. 10 P. 27:

> "As a Court of Equity, it will deal with the rights of the parties upon their merits, rather than be controlled by strict legal forms, and will seek to administer the law according to its spirit and not merely by its letter. It follows that within the limits prescribed by the Bankruptcy Acts and the special rules of practice prescribed by the Supreme Court, bankruptcy proceedings are to be administered in accord with the general principles and practices of equity, and this applies to the corrections of mistakes in judgment and other matters of record injurious to the rights of the parties." Many cases cited.

(e) Then we go to Vol. 1, Sec. 502, p. 622, Remington on Bankruptcy, in which the author states that the rule that steps must be taken in term as to orders made does not apply to proceedings in Bankruptcy as follows: (pp. 622-623.)

> "But, in Sec. 2, the Bankruptcy Act seems to contemplate that from the filing of the petition to the closing of the estate, the proceeding shall be continuous, and a court of bankruptcy always open, like surrogate and probate courts, where estates are administered and which have no terms. It provides that matters arising in bankruptcy proceedings may be heard in vacation or term time, and orders allowing or disallowing claims may be reconsidered, closed estates reopened, and compositions and discharges set aside. It has been held by the Supreme Court that under the Bankruptcy Act of 1867, the District Court for all purposes of its bankruptcy jurisdiction, is always open, and has no separate terms; that the proceedings in a pending suit are, therefore, at all times open for re-examination upon application

therefore in appropriate form, and that any order made in the progress of the case may be subsequently set aside and vacated upon proper showing, provided rights have not become vested under it, which will be disturbed by its vacation; and it is held that application for such re-examination will not have the effect of a new suit, but of a proceeding in an old one. Sandusky vs. National Bank, 23 Wall. 289, 23 L. Ed. 155. This language used in reference to the Act of 1867 was said by this court to be applicable to the present Bankruptcy Act in re Lemmon & Gale Co. 7 A. B. R. 291, 112 Fed. 296. We are of opinion, therefore, that the question presented by the petition was open and the court below had power to determine it, although several terms of the District Court had expired since the adjudication."

(f) There is another line of cases which hold that this Court had jurisdiction of the question of redemption even after May 18, 1942, by virtue of another theory where the rights of other persons have not intervened.

This means the rights of third persons. It would not cover any rights of the Creditor to a public sale. It never had such a right as that as against the Debtors' right to redeem at the appraised value.

We cite on this point: 1 Remington, Sec. 502, p. 621-622. This author cites the Ives case, 113 Fed. 911, which covers the whole point.

We call attention to the following decisions of the Federal Supreme Court which applies here: "A Federal District Court has power to set aside its order dismissing a petition for reorganization of a corporation under 77 B of the Bankruptcy Act and to rehear the cause, notwithstanding the period allowed by the Act for appeal from the order, has expired." (Wayne vs. Owens, Illinois, 300 U. S. 131.)

If the hands of a Federal District Court "were tied" it could not carry out this Act of Congress or administer the law in the many bankruptcy cases coming before it. It has many inherent powers, one of which is to modify a previous order in bankruptcy at any time before the rights of third persons have intervened. The proceedings are one continuous case. It would not be a Court of Equity if it did not have such powers.

(g) How shall this Court treat or consider the action of the Debtors in filing their petition, in effect, to set aside the deadly judgment of February 17, 1942, in which the District Court overruled the decision of the Supreme Court in Wright vs. Union Central, 311 U. S. 273, handed down December 9, 1940. It paid no attention to that previous decision of that Court but solemnly ordered that the Debtors pay $4606.25 of alleged rent in addition to the value of the land and thereby utterly defeated redemption. The Creditor had "no Constitutional claim" to a penny more than that appraisal. Such a decision was null and void and should have stirred up the conscience of a Court of Equity that on its own motion should have promptly cleared its record of such a ridiculous order. No technical rule should have stopped it. (The fact that said District Court afterwards changed its ruling and rejected the absurd claim of $4606.25 shows it admitted it had made an awful mistake.

(h) This clause in the judgment that they must pay this rent in addition to the appraisal, was a part of the record in said cause and hence was before the Court. It was bound to take notice of its own decisions. The Debtors' petition of September 2, 1942, was properly filed. The first clause in the petition states that— "Such proceedings were had in said Court and cause on February 17, 1942,

that said Court fixed the value of the real estate———set out in the schedules in said cause at the sum of $5650.00." This reference made the whole judgment a part of the petition. The Creditor pleaded the former judgment, but did not stop with that. It then changed that absurd order by answering the petition on its merits and in effect brought a cross-action in these words:

PARAGRAPH II

> "Further answering herein the Bank states that the rental value of said tracts of land consisting of 144¼ acres is not less than $5.00 per acre per year; that the rental is due and unpaid for the years 1937 to 1941 (both inclusive) in the aggregate amount of $3606.25; that the Debtor-Bankrupt has also had the use of said land during 1942 and if allowed to redeem, rental should be paid for that year in the amount of $1000.00." (R. 35.)

By the use of the words—"If allowed to redeem, rental should be paid for that year in the amount of $1000.00"—shows it expected the Court to allow the Debtors to redeem at $5650.00 if they would pay the $4606.25.

This Court must consider that the Creditor could not appear to the second petition to plead res judicata. By filing an answer on the merits and bringing in a new claim of $4606.25, and by trying the case on that answer, it waived the finality of the first order and set it aside. That stops it from claiming that the merits of the case were not tried on the second petition and is now bound on that judgment. After litigating its claim for the rent in the trial on the second petition it can not deny the jurisdiction of the Court to hear the case on the second petition, to set aside the void order in the first and deny the jurisdiction of the Court to reject its claim for rent. Justice can not be done in this case without holding the District Court had

power to change its mistaken order in which it decided in the teeth of the decision in the Wright Case—that the Creditor could collect the appraisal and rent too.

(i) What will this Court do with the finding of the District Court at the trial on September 15, 1942, in which the Court found the Debtors were entitled to redeem the Creditor's claim for $4606.25. It cannot blot that out of the record. The Creditor is bound by that finding against it for the rent and it is bound by the other part of the finding allowing the Debtors to redeem. Why not? It made the issue as to the rent and thereby consented to the jurisdiction as to the rent. It cannot claim part of the finding and reject the part in favor of its opponent. This finding must stand and be considered as the solemn finding of the Court which binds both parties. What was the Court trying? Certainly the Debtors' petition to redeem and the Creditor's answer set out above or cross-action to recover a finding against the Debtors for $4606.25 alleged rent and require them to pay the appraisal $5650.00 and the rent in addition thereto. That is what the Court was trying. In other words the Debtors sued the Creditor for the right to redeem the land at its appraisal. The Creditor opposed that and filed a cross-action to recover a finding of $4606.25 for rent, and to require them to pay that in addition to the appraisal. Those were the issues. There was another issue—the Creditor was resisting the right to redeem at said appraisal. That was what they were trying to settle. The Court must consider, if that be true, is it not absurd for the Creditor to now claim that it was not resisting redemption at $5650.00, and that there was no trial between the parties on said issues, and that the Creditor could file its cross-action against the Debtors to collect $4606.25 and defeat redemption and take part in the trial on those issues and now dodge responsibility and

claim it was not resisting the right to redeem or trying to collect said alleged rent and now deny the jurisdiction of the Court and that it acted without authority. The law will not allow such conduct.—That it is not bound by the finding of the Court.

(k) The Creditor had abandoned its first trial and order and had consented that the Court might rehear the case. One issue was the Debtors' right to redeem at $5650.00 and should not be required to pay a cent more. The other issue was that the Creditor sought to collect $4606.25 from the Debtors in addition to the appraisal and thereby defeat redemption. When the Creditor joined issue on said two questions it abandoned its former judgment. This action on the part of the Creditor gave the Court authority to rehear the question of redemption and the rent. The record shows a copy of said petition was sent to Counsel for Creditor when filed and that said Counsel was present at said trial and took part in the trial and argued it. (R. 30-43.)

(l) The Court must consider that the record shows the Creditor stood by at the trial and did not attack the finding of the Court that the Debtors should be allowed to redeem without paying the $4606.25 of alleged rent by raising the objection that it was not sustained by sufficient evidence. When it failed to do that it is bound by that finding. Hence that question was not before the Court of Appeals. It paid no attention to that but struck down that finding in this: The District Court found the Debtors should redeem but the Court of Appeals disregarded that finding and entered a finding that the Debtors' petition to redeem should be denied. When as shown above that question was not before it. No Court can decide a question not presented before it.

(m) The Court must consider that the finding in the first order is an absurdity. It required the Debtors to pay $10,256.00 for $5650.00 worth of land. There was no provision in the Act of Congress for that. It would have defeated the purpose of the Act and made it no law at all. The new finding conforms to the Act and to the evidence. It was enacted, as the Supreme Court says, to aid "distressed farmers". The order also found all of the taxes on the land had been paid. That paid all of the rent. There was no need to collect any more rent. The repair of the buildings was taken care of and there was no reason to have the Debtors pay in rent for that. They took the land subject to making the necessary repairs.

(n) "Micawber's plate should go down." The money paid by the Debtors into Court in the sum of $5650.00 pays the whole debt to the Debtors and they should be discharged of the balance of the $11,775.93 above the $5650.00. The Acts of Congress are enacted for the benefit of its citizens and for the helpless. Some say this is a harsh law. It is not. It only gives to the farmers, the basic industry of the Country, the same rights as are given to the other industries for reorganization. Wright vs. Vinton Branch Bank, 300 U. S. 440. During the depression farmers could not realize enough income to keep themselves and pay their taxes. Billions of dollars of the debts and stock in manufacturing companies, Banks and other industries were wiped out by reorganization under the provisions of the general Bankruptcy Acts. It had to be done for the good of the Country. Consider these words:

> "The development of bankruptcy legislation has been towards relieving the honest debtors from oppressive indebtedness and permitting him to start afresh."

"By the Act of March 3, 1933, the Congress deliberately undertook the rehabilitation of the debtor as well as his discharge from indebtedness." Wright v. Union Central, 304 U. S. 502.

(o) The Court must consider that the Creditor consented to said finding and has not attacked it and it was not presented to the Court of Appeals, and it had no right to disregard, set it aside and deny the right of redemption. That which the Court in its opinion said in denying the right to redeem was overthrowing the District Court's finding in the last trial, that they had the right to redeem. That question was not before the Court, hence what it says was obiter dictum.

The Court must consider that a citizen cannot object to this Bankruptcy Act because it may affect his property rights. He surrendered that in becoming a citizen for the benefits society has given to him.

(5) SPECIFICATION OF ERRORS OF THE CIRCUIT COURT OF APPEALS WHICH WILL BE URGED ON APPEAL:

(1) The Court of Appeals erred in holding that the judgment of the District Court of February 17, 1942 was final. (R. 27.)

(2) The Court overlooked that this judgment was rendered in a Court of Equity and of Conscience wherein the Court will "deal with the rights of the parties upon their merits, rather than be controlled by strict legal forms and will seek to administer the law according to its spirit and not merely by its letter." (Brandenburgh, Sec. 10.)

(3) The Court too overlooked that while Section 75 Subsection (s) of the Act of August 28, 1935 was enacted by Congress for the reorganization and relief of "dis-

tressed farmers'' and to save American farm homes, yet the title to the Act shows it is a part of the General Bankruptcy Act of July 1, 1898 and hence the liberal rules of Construction of the old Act apply to the New Act.

(4) To leave no doubt about the question this Court in Wright vs. Union Central, 311 U. S. 273 (Dec. 9, 1940.) (We do not have the official edition of the Report in our local library. Hence cannot give the pages of quotation.) Held that the purpose of Congress in enacting this legislation was as follows:

> "This Act provided a procedure to effectuate a broad program [to save American farm homes] of rehabilitation of distressed farmers faced with the disaster of forced sales and an oppressive burden of debt." (Our brackets.)

(5) Hence, this Act must be construed to carry out that purpose. The Court of Appeals greatly erred in paying no attention to this purpose of Congress and in applying only technical rules to govern its decision, which deprived the Debtor of the benefit of this remedial Act. The Court erred in overlooking that.

(6) To warn the Inferior Courts from applying technical rules in construing and applying this and to prevent them from defeating the purpose of Congress, this Court in said Wright case admonished the lower Courts just how this Act should be construed as follows:

> "Safeguards were provided to protect the rights of secured creditors, throughout the proceedings, to the extent of the value of the property.—There is no constitutional claim of the creditor to more than that. And so long as that right is protected the creditor certainly is in no position to insist that doubts or ambiguities in the Act be resolved in its favor and against

the debtor. Rather, the Act must be liberally construed to give the debtor the full measure of the relief afforded by Congress,—lest its benefits be frittered away by narrow formalistic interpretations which disregard the spirit and the letter of the Act." (p. 168-169.)

(7) The Court erred in not construing the Act to "give the Debtor the full measure of the relief afforded by Congress." The Creditor may object to this Court directing how the Court of Appeals and District Court should decide. It has supervisory power over the Federal lower Courts and has power to tell them how to decide. Our Supreme Court would not be Supreme if every inferior Federal Court could disobey the admonitions of that supervisory power. This is to bring about uniformity in Federal decisions.

(8) The Court erred in overlooking that this finding of February 17, 1942, that the Debtors should pay the appraisal of $5650.00 and $4606.25 as rent in addition thereto to redeem is in the teeth of the decision of this Court in the above Wright case which holds there is no "Constitutional claim of the Creditor to more than that." Meaning $5650.00. That said decision has not been overruled. Hence, said District Court could not strike down said decision of the Supreme Court. The Court of Appeals also tried to overrule the Supreme Court. The Court erred in overlooking that it was the duty of said District Court to correct the error it had made and get its finding to conform to the decisions of this Court in the Wright case: i.e. To find the Debtors could redeem at $5650.00 without adding thereto $4606.25 alleged rent to it. This rule of construction is older than our law. Listen: "The letter Killeth. The Spirit giving life." "Justice must be done, though the Heavens fall."

(9) The Court erred in overlooking that the order of February 17, 1942 which had required the Debtors to pay the appraisal of $5650.00 and also the alleged rent of $4606.25, that that was flying in the face of the decision of the Supreme Court in the Wright case and made it utterly impossible to redeem, when the Court's attention was called to the great mistake it had made, in effect, it promptly set the judgment aside to clear its record of such an absurdity. To contend that said Court of Equity and of Conscience did not have the inherent power to correct such mistake as that is absurd and very unreasonable. To contend it has no such power is also very unreasonable and to strip it of all power. The Court greatly erred in overlooking all of this.

(10) The Court erred in assuming that the District Court had no power to correct the awful mistake it made in the order of February 17, 1942. No authority was cited holding a trial Court had no such power. The authorities are all to the contrary.

(11) The parties consenting, the Court had the power to take up the matter still pending before it and correct this mistake. The record does not show that the Creditor ever mentioned that the Court had made redemption impossible. It had no right to leave such an order stand and require the Debtors to pay $4606.25 of rent when the Supreme Court had held that the appraisal is all it could collect.

The Court erred in overlooking that the usual rules about parties having to appeal at the end of the term of Courts, do not apply in Bankruptcy proceedings. This results from the law that there are no terms in bankruptcy proceedings. This was one continuous case from the beginning to the present. As stated above in quoting from

Remington on Bankruptcy and the Ives case—there are no terms in bankruptcy proceedings, the Courts are always open and may re-consider at any time.

(12) In the Wayne case cited above the Supreme Court held that the District Court may set aside its order dismissing a petition for reorganization of a corporation under 77 B of the Bankruptcy Act and to rehear the case even though the period allowed by the Act for appeal from the order has expired. (Wayne vs. Owens, 300 U. S. 131.)

(13) The Court erred in overlooking that there is still a much stronger reason why the Court should take the case up on September 15, 1942 and correct this error and make the order conform to the provisions of the Act of Congress in this: The Debtors filed their petition to redeem or review the first order, on September 2, 1942, and sent a copy to the Creditor. As shown above, it, filed a cross-action to collect this rent. (R. 35.) It thereby recognized the new petition. In doing this it invoked the jurisdiction of the Court to consider the case again. In doing that it gave the Court its consent to hear the case again and asked it to allow the rent, and thereby, require the Debtors to pay $10,256.25 for $5650.00 of land that it would be sure to get the land with such a plan. It put its rent in the case, and in doing that it admitted that the claim to redeem could be considered too. If the Court had the power to allow the rent it had the power to correct the first order and allow them to redeem by paying only the appraised value and not a cent more rent. The Creditor saw the Court had made a mistake in the first order and it is resisting its correction now so that it can deprive these "distressed farmers" of the benefits of this Act of Congress and take their Home from them. All of the money that the law gives this Creditor for the land has been

paid into Court, but it does not want that. All it wants is this farm. It must not "pass."

(14) The Court erred in looking only at the order of February 17, 1942. It paid no attention to the fact that by adding the rent of $4606.25, it meant the loss of the farm. In considering that order it did not state that, when the Debtors filed their petition to redeem, the Creditor filed its cross-action to require the Debtors to pay $4606.25 or rent, when the Supreme Court had held the only amount it could collect on redemption was the appraised value. The Court never mentioned that this Court in the Wright case had limited the amount the Creditor could collect to the appraisal.

(15) The Court erred in trying to make it appear that the doctrine of a conditional judgment applied. That doctrine has nothing whatever to do with the question and does not throw any light on it.

(16) That the most important question in the appeal was overlooked entirely by the Creditor and not mentioned at all, in this: The Court recites that on September 15, 1942, this case came up for trial on the Debtors' petition for an extension of time in which to redeem and to be allowed to pay the redemption money into Court and also, the motion of the Federal Land Bank to strike out the Debtors' petition and the Creditor's motion for an order appointing a Trustee to sell the real estate herein. And its answers herein. (H. I.) (Over 11 pages of answer) (R. 31-38.) All of its answers except the one marked Paragraph II (R. 35) were devoted to a repetition over and over of the question as to the right to redeem at the amount of $6550.00, and urged it was settled in the order of February 17, 1942. This would have been res judicata, if the Creditor had not have ventured too far, in this: It plead a

new matter and filed a cross-action in this answer II as follows:

> "Further answering herein states that the rental value of said tracts of land consisting of 144¼ acres is not less than $5.00 per acre; that rental is due and unpaid for the years 1937 to 1941 [both inclusive] in the aggregate amount of $3606.25; that the Debtor-bankrupt has also had the use of said land during 1942 and if allowed to redeem rental should be paid for that year in the amount of $1000.00." (In all $4606.25.) (Our Bracket.) (R. 35.)

By the language of the Creditor it assumed that the Debtors would be allowed to redeem. The Debtors' petition had set out that it was ready to pay the money into Court on the basis of $5650.00 and that should pay the whole debt, not a cent more should be paid. It was shown therein that all of the taxes on the land had been paid and that paid the rent. That Debtors would take care of the repairs. (R. 28-30.) And then the order proceeds:

> "And said James N. Roney being present in Court in person and by Samuel E. Cook, his Counsel, herein and the Federal Land Bank, being represented by Theo. W. Bates in person, its Counsel herein." And the Court having read (R. 43) the verified petition of the Debtor—[It had set out all of the facts and was verified and not disputed.]—and heard the argument of Counsel—[It will be presumed Mr. Bates stated all of the facts.]—and being fully advised in the premises—[The law implies from that, the Court knew and understood all of the issues and facts in the case.]—finds the follow[ing]:
>
> "That the order referring the matter of rent to Hon. Fred B. Dressel Commissioner—be set aside." [The taxes had been paid—that paid the rent and no rent went to the Creditor.] "That said petition of

said Debtors to redeem is granted." (R. 43.) (Brackets Ours.)

And "That the Federal Land Bank take nothing by its claim for rent as set out in its answers herein. (H. I.)" [Thus the bogus claim of $4606.25 went out of the window.] (Brackets Ours.) (R. 43.) The Court was getting in line with the Supreme Court: "And its motion to strike out and appoint a Trustee to sell said real estate is denied. To each of which the Creditor excepted." (R. 43.)

Then, the Court rendered judgment on said findings as follows: "That said time heretofore granted to said Debtors in which to redeem said real estate is extended and said Debtors are allowed to redeem the same at this time, by paying into Court the sum of $5650.00 as payment in full of said mortgage debt." (R. 44.) [That hooked up with the first order, February 17, 1942.]—"Then it is shown the Debtors had paid all of the taxes against the land." (R. 44.) [And that paid all of the rent because the rent is collected only to pay the taxes and the repairs of the property. The Creditor gets the appraisal and no rent whatever goes to it.] (R. 44.) (Bracket Ours.)

We will cite the Ezell case later which holds no rent goes to the Creditor. (Finding R. 43-Judgment 43-44.) Then the Court entered an order turning the possession and title over to the Debtors, free and clear of the mortgage debt and of all the obligations of the Debtors. (R. 44.) Then the lands are described. (R. 44-45.)

It is further adjudged that the payment of the $5650.00 shall pay the whole mortgage debt and the Debtors are discharged of the balance of said debt and the judgment of the Wabash Circuit Court over and above the $5650.00. (R. 45.) And the sheriff's sale in said Court is set aside and if any sheriff's deed was issued it is set aside. There

is nothing in the record to show that the Creditor's Counsel objected to any of the issues set out above were not before the Court, and that the Court heard, and considered each of the same.

(17) It thus appears that all of these issues and questions were submitted for trial before Judge Slick in the presence and hearing of Mr. Bates. It is implied that the latter orally argued each of them. The record does not show that Mr. Bates objected to the Court hearing them at said trial. The Creditor has not brought up the evidence at said hearing. It will be presumed that the evidence sustained the finding i.e.: "That said petition of said Debtors to redeem is granted." (R. 43.)

That finding stands like a "stone wall" to protect the Debtors in this cause. Merely taking an exception would not challenge it. It would have to be attacked by an assignment of error or statement of points that it was not "sustained by sufficient evidence" and then have the evidence taken up as part of the appeal. This was not done by the Creditor. Like "Rip Van Winkle" it slept and did not raise any question against the finding of the Court in the trial Court below. It could not attack in the Court of Appeals. That is only a Court of review of questions raised below. This means said finding, having not been attacked below, no question against it was raised on this Appeal and hence it was not before the Court of Appeals at all in the Creditor's appeal. The Court of Appeals could not decide any question not raised below and not assigned as error. The Court failed to set out in its opinion the failure of the Creditor to attack this finding below and hence it was binding on the Court and it could not lay hands on it. What did it do about it? It quietly set this finding aside even though not before it by ordering the District Court to

"dismiss debtors' petition for redemption" and to proceed to sell the land at public sale. Hence the Court greatly erred in striking down this finding of the Court by denying them the right to redeem their Home.

(18) Here, the Judge of the District Court was present the parties were before him and their Counsels were present. The Court in its finding and judgment recites that there were some nine questions or issues presented to it. The Creditor's Counsel knew the Court was about to take up and consider said issues, and the record does not show that Counsel made objection to taking them up. The Creditor's orally argued these issues to the Court. The presumption is he argued all of them and pointed out every issue and thus presented each to the Court. The Judge knew he was hearing and determining these issues. The Creditor's Counsel knew that too. The big issue was to allow the Debtors to redeem at the appraised value.

(1) The Court stated to Creditor's Counsel that he would find that the time would be extended to this time or to the present and allow them to pay the $5650.00 into Court as payment in full of the mortgage debt, which was paid into Court.

(2) The Court stated to Counsel, Mr. Dressel would not be required to collect any rent.

(3) In effect that he would set aside the gross error in the order of February 17, 1942, requiring $4606.25 in rent in addition to the redemption money, by entirely rejecting the Creditor's claim for said rent.

(4) The Court stated to Counsel that he would find said Debtors had paid all the taxes due on the land and assumed the responsibility of repairing the premises.

(5) That he would turn the full possession and title to the land over to the Debtors, free and clear, of said mortgage debt.

(6) And, also, that he would enter judgment that the payment of said $5650.00 paid the whole mortgage debt and he would be discharged from the payment of the balance of said debt above said appraisal.

It will be noted that the Creditor in the record had demanded the following:

> "That the Debtors' petition to redeem the land at $5650.00 should be denied and that the petition of the Creditor that the land be sold at public auction and that the Creditor be allowed to bid at said sale, the amount of its debt $11,775.93." (R. 18.)

The action of said Counsel was a consent that said Court should decide said issues and by filing its claim after time to collect the $4606.25 and allowing the Court to consider it, gave the Court jurisdiction. After all that happening in the presence of Counsel, it is absurd for him to now say—Judge Slick was not deciding said cause, and that said finding is not a finding, and said judgment is not a judgment. Said Court was reviewing said finding and judgment of February 17, 1942, and said Creditor knew that he was correcting it.

(19) The Court erred in overlooking the obligations of the Courts in construing a new Act as follows:

> "There are three points to be considered in the construction of all remedial statutes; the old law, the mischief and the remedy; that is, how the common law stood at the making of the Act. What the mischief was, for which the common law did not provide; and what remedy the Parliament hath provided to cure this mischief. And it is the business of the

Judges so to construe the Act as to suppress the mischief and advance the remedy." (Introduction Sec. 3 (Star Page 87) bottom page 53, Blackstone's Commentaries on the Laws of England.)

(20) There are other manifest errors shown in the record which this Court should notice and consider. The Debtors will present them later.

(7) ARGUMENT

(A) SUMMARY OF ARGUMENT.

(1) The Court on February 17, 1942, fixed the value of the real estate at $5650.00 and that the Debtors would be required to pay in addition thereto the sum of alleged rent of $4606.25. The order to pay this rent was a great mistake as the Supreme Court in the case of Wright v. Union Central, 311 U. S. 273 on December 9, 1940 had specifically held that all the Debtor had to pay of the whole debt was, said appraisal and the Court also stated that the Creditor had "no constitutional claim" for a cent more than that. In the face of that decision the Court of Appeals took another plan which led to a public sale with the right of the Creditor to bid at the sale its whole debt of $11,775.93. There was no difference between the order of the Court of February 17, 1942, requiring the Debtors to pay $4606.25 rent to redeem and in the plan of the Court of Appeals in denying the right to redeem at the appraised value and ordering a public sale and allowing the Creditor to bid its whole debt of $11,775.93. Each brought the same result i. e. made redemption an impossibility and resulted in the same thing—the loss of a farm home. The last plan is as vicious and violates the intent of Congress in enacting this Act, the same as the first.

(2) But the Court of Appeals was caught in its own works. It overlooked that this finding of the Court at the last hearing which corrected the first, specifically found the vital issue as follows:

"That said petition of said Debtors to redeem is granted." (R. 43.) And rendered judgment as follows:

> "It is therefore, ordered————that said time heretofore granted to said Debtors, in which to re-

deem [thus hooking it up to the first order.] said real estate is extended and said Debtors are allowed to redeem the same at this time, by paying into Court the sum of $5650.00 as payment in full of said mortgage.'' (Brackets our own.) (R. 44.)

(3) The case was still pending before said District Court. No sale of the land had been made and the litigation was still between the original parties. The Court knew it had made a great mistake in allowing the claim for rent. It thought it had the power and that it was its duty to correct its own mistake and get its finding in line with the Wright case. The Rules provide but one way to attack and overthrow the above findings of fact i. e. To assign as error or statement of a point that neither of these findings were sustained by sufficient evidence and take the evidence up in the appeal. That would raise the question. The record does not show that the Creditor did that. It is silent on that point. The Court could not exercise a power it did not possess, or decide a question not before it.

(4) The fact that it failed to thus raise any question against the findings, was a waiver of any attack on them. And hence, by all of the rules, said question was not before the Court of Appeals at all. It follows, if not raised or presented the Court of Appeals had to give the Debtors the benefits of said findings and leave them stand. The court said nothing about this defect in the record. It should have said the findings have not been challenged here by an assignment of error, and hence are not before the Court and we can not cast them out but will have to give the Debtors the benefit of them. This requires the Court to affirm the findings of the trial Court and allow the Debtors to redeem, as this is only a Court of review and must adopt the findings of facts as found by the trial

Court, and added there was no evidence brought up on the appeal and hence there was no evidence before the trial Court upon which to base an opinion against the findings and hence the Court of Appeals is bound by the findings of the trial Court, unless they are attacked by an assignment of error on the ground they are not sustained by sufficient evidence, which was not done here.

(5) The action of the Creditor gave the Court jurisdiction to disregard the erroneous order of February 17, 1942, to correct the deadly mistake therein of trying to overrule the decision of this Court in the Wright case.

(1) It consented to set the first order aside and try the case over and correct the mistake by filing this answer:

"PARAGRAPH II"

> "Further answering herein the Bank states that the rental value of said tracts of land consisting of 144¼ acres is not less than $5.00 per acre per year; that rental is due and unpaid for the years 1937 to 1941 (both inclusive) in the aggregate amount of $3,606.25; that the Debtor-Bankrupt has also had the use of said land during 1942 and if allowed to redeem, rental should be paid for that year in the amount of $1,000.00."

(6) That was a cross-action which invoked the jurisdiction of the Court to try the case again and the Creditor cannot now question that jurisdiction. It is bound by the last finding—that the Debtors should redeem at the appraisal.

(7) The Court had the inherent power to correct such an awful mistake as to require the Debtor to pay $4606.25 alleged rent when the Supreme Court had explicitly held that all they had to pay to redeem was the fixed value of the real estate. That became the debt. All of the rest was

cancelled and discharged. If that could not be done, then this Act was not a Bankruptcy Act. It would be a sham. It would be asking "for bread and receiving a stone."

(8) Black on Judgments above holds that the Court had power to correct that deadly mistake.

Brandenburgh on Bankruptcy above said the Court had power to correct such a mistake.

(9) Vol. 1 Sec. 502-622 of Remington on Bankruptcy states, the proceedings in Bankruptcy have no terms, that the Court is open at all times and orders may be subsequently changed.

(10) This last order of the Court to redeem was made by the District Court. It had jurisdiction of the case and is a Court of Equity. It found as a fact that this awful mistake should be blotted out and the Debtors given the right to redeem. It has Bankruptcy powers. The Court of Appeals is not a Bankruptcy Court. It is only a Court of review or a Court of errors. It has no other powers. It has no substantive power to set this finding aside. It should have said: "We find the District Court, who tried the case, saw and heard the witnesses and was in a position to tell whether this time given to redeem should be extended or not. It was the trial Court charged with the duty of administering the Act to carry out the intent of Congress. The Court of Appeals can only review the errors raised. None were raised as to said finding. This Bankruptcy Act does not provide that we can overrule the trial Court on a question of fact, unless it is attacked by an assignment of errors. That was not done here. Hence, we are bound by said finding of the trial Court and must give the Debtor the benefit of said finding. There was no evidence brought to us showing this finding was not sus-

tained by the evidence. Hence, there is nothing before the Court upon which to base a finding that said finding should be cast out of the window."

(B) ARGUMENT PROPER

(1) Every statement of a fact, or legal question, or the citation of authorities is an argument. To argue at length here would be largely a repetition of that which has preceded. There is no dispute as to the facts in the record. They show the Debtor had the right to the benefits of this Act. He brought his case within this Act. The most we can add is to repeat several of the authorities:

(2) Brandenburgh (4th Ed.) Sec. 10, p. 27, throws much light on this appeal when it says:

> "As a Court of Equity, it will deal with the rights of the parties upon their merits, rather than be controlled by strict legal forms, and will seek to administer the law according to its spirit and not merely by its letter. It follows that within the limits prescribed by the Bankruptcy Acts and the special rules of practice prescribed by the Supreme Court, bankruptcy proceedings are to be administered in accord with the general principles and practices of equity, and this applies to the correction of mistakes in judgment and other matters of record injurious to the rights of the parties." Many cases cited.

Then we go to Vol. 1, Sec. 502, p. 622, Remington on Bankruptcy, in which the author states that the rule that steps must be taken in term as to order made does not apply to proceedings in Bankruptcy.

Let us hear Blackstone again when he said:

> "There are three points to be considered in the construction of all remedial statutes; the old law, the mischief and the remedy; that is, how the common law

stood at the making of the Act. What the mischief was, for which the common law did not provide; and what remedy the Parliament hath provided to cure this mischief. And it is the business of the Judges so to construe the Act as to suppress the mischief and advance the remedy." (Introduction Sec. 3 (Star Page 87) bottom page 53, Blackstone's Commentaries on the Laws of England.)

(3) Do not forget—"And it is the business of the Judges so to construe the Act as to suppress the mischief and advance the remedy."

The Court of Appeals did not do that here.

(4) Then turn to the decision of the Supreme Court in the Wright case and you will find it follows Blackstone:

(5) Mark its language: "This Act provided a procedure to effectuate a broad program of rehabilitation of distressed farmers faced with the disaster of forced sales and an oppressive burden of debt."

(6) In substance: It protects the right of seemed Creditors, throughout the proceedings to the extent of the value of the property. "There is no Constitutional Claim of the Creditor to more than that"—"The Act must be liberally construed to give the Debtor the full measure of relief afforded by Congress." What is that full measure of relief? In this case to allow the Debtors to keep their home and require the Creditor to accept the $5650.00 paid into the Court. Enough has been said.

Respectfully submitted,

SAMUEL E. COOK,
Huntington, Indiana,
Counsel for Debtors.

No. 954.

Supreme Court of the United States

October Term, 1943.

IN THE MATTER OF
JAMES N. RONEY AND MARGUERITE C. RONEY,
DEBTORS

JAMES N. RONEY AND MARGUERITE C. RONEY, - *Petitioners,*

vs.

THE FEDERAL LAND BANK OF LOUISVILLE,
KENTUCKY, - - - - - - - *Respondent.*

ANSWER TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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ANSWER TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To said Honorable Court:

STATEMENT OF THE CASE.

A true statement of the facts and the statement of facts on which this case was decided by the Circuit Court of Appeals is as follows:

Roney filed his original petition on July 23, 1935 (Record, page 9, paragraph 1). He was adjudicated under new subsection (s) (11 U. S. C., Section 203 (s)) on October 22,

1935 (Record, page 11). The three year stay order was entered in 1935. Two-fifths crop rental was fixed by the Conciliation Commissioner (Record, page 33).

At the expiration of the moratorium period the 144¼ acre farm located in Wabash County, Indiana, on which the respondent has the first and best lien of record, was ordered sold by the District Court. On appeal to the Circuit Court of Appeals for the Seventh Circuit the order of sale was reversed and the case remanded to the trial court with directions to redetermine the valuation of the farm and fix a reasonable time for redemption following this court's decision of Wright v. Union Central Life Ins. Co., 311 U. S. 273, 85 L. Ed. 184. Immediately upon return of the case to the District Court the respondent filed its petition (Record, page 7) asking for an order of reference for the purpose of determining the value of the property and the fixing of a reasonable time within which redemption could be made and order of sale upon non-redemption within the fixed time. An amended petition was later filed (Record, pages 8-9) alleging that the wife of the petitioner, James N. Roney, had an interest in the property and asking that she be required to appear and set up whatever interest she might have therein.

The petitioners filed an answer to the petition as amended (Record, pages 9-15) in which they admitted that she owned a one-third interest in the property (Record, page 9) and consented that if there was no redemption her interest should be ordered sold with the husband's (Record, page 13). The petitioners also alleged that they were entitled to three years from December 9, 1940, the date this court decided Wright v. Union Central Life Ins. Co., 311 U. S. 273, 85 L. Ed. 184, 61 S. Ct. 196, to redeem the property (Record, page 15).

Upon entry of an order of reference of the respondent's petition to a Special Master (Record, page 3) he held hearings for the purpose of determining the value of the property and the fixing of a reasonable time for redemption at that value. The Special Master entered an order on November 10, 1941 (Record, pages 6-7) fixing the value of the property at $5,650.00 and ninety days from that date within which redemption should be made. No rent had been paid or accounted for at that time and THE ORDER FURTHER PROVIDED THAT THE PETITIONERS SHOULD WITHIN THIRTY DAYS FROM THE DATE THEREOF FILE AN ACCOUNTING OF RENTS FOR THE PAST THREE YEARS AND PAY INTO COURT THE RENTAL FIXED BY THE CONCILIATION COMMISSIONER.

The petitioners and respondent both filed exceptions to the Conciliation Commissioner's order and petitions for review and appeal which were heard by the District Judge on February 17, 1942. He made findings of fact that the petitioner, James N. Roney, had theretofore been ordered to pay rent but had failed to do so or make any accounting of crops and that the petitioner, Marguerite Roney, had consented to a sale of her interest in the property in the event sale became necessary (Record, page 27). The court entered an order (Record, pages 27-28) fixing the value of the property at $5,650.00 and ninety days from February 17, 1942 within which the property could be redeemed. He further ordered the cause re-referred to the Special Master (Record, page 27), to hold a hearing to determine the rent due for the crop years 1937 to 1941, inclusive. THE RENTAL FOUND TO BE DUE WAS ORDERED PAID IN ADDITION TO THE FIXED VALUE OF $5,650.00 WITHIN NINETY DAYS FROM FEBRUARY 17, 1942 (Record, page 28). It is the order of February 17, 1942 under which the petitioners attempted to redeem.

The fixed redemption period expired on May 18, 1942. The petitioners did not make deposit of the $5,650.00 fixed value. Hearing was not held on the order of re-reference to determine the amount of rental due and payable. Nor was any deposit made to take care of the rental.

On September 2, 1942, the petitioners filed a verified petition to redeem (Record, pages 28-31) alleging that they

> "ARE NOW READY to pay said sum of $5,650.00 into court and also show that they have deposited with the Bank of North Manchester. Indiana, which is refinancing said debt about $853.50 to pay delinquent taxes on said land and $200.00 balance due their Counsel in said cause" (Record, page 30) (Emphasis ours);

the petitioners further alleged that necessary repairs to the buildings and fences required an expenditure of $1,000.00 which they would pay with the taxes as a release of rent due for the use of the land during the moratorium and redemption periods.

The respondent filed a verified motion to strike the petition to redeem (Record, pages 31-32) in which it alleged that the petition to redeem was not filed and deposit was not made of the fixed value and rent on or before ninety days from February 17, 1942, the time within which redemption could be made under the order of that date, and that the order became final and binding on the petitioners on the absence of objection, exception or appeal taken within thirty days from its entry.

The respondent also filed a verified answer in three paragraphs to the petition to redeem (Record, pages 34-38). The first paragraph denied the material allegations of the petition and alleged that tender or payment of $5,650.00 in court subsequent to May 18, 1942, did not entitle petitioners to redeem the property. In the second para-

graph the respondent alleged that that the rental value of the property was not less than $5.00 per acre; that rental was due for the years 1937 to 1941, inclusive, in the total amount of $3,606.25; and that rental of $1,000.00 should be paid for 1942 if redemption was allowed. It denied that payment of taxes and for alleged necessary repairs in the amount of $1,000.00 should or would pay and be a release of rent payable by the petitioners and denied that the cost of the necessary repairs was $1,000.00. The third paragraph set out the February 17, 1942, order and alleged that it was not appealed from and was in full force and effect after its entry and on or before the expiration of the redemption period on May 18, 1942; that the petitioners failed to redeem the property on or before ninety days from February 17, 1942, by depositing $5,650.00 with the court or some of its officers. Dismissal of the petition to redeem and entry of an order directing sale of the property was the prayer of the respondent's answer. The respondent also filed a motion for a supplemental order appointing a substitute trustee for one who had expressed the desire that he not be requested to qualify and for an order of sale (Record, pages 38-42).

The petition to redeem, the respondent's motion to strike, its answer to the petition to redeem and motion for a supplemental order were heard by the District Judge on September 15, 1942. The court directed the preparation of the order shown as item 58 on pages 43-46 of the Transcript of Record, which order was not signed and entered until October 17, 1942, as shown in item 85 of the Transcript of Record on page 62. This order denied respondent's contentions that the petition to redeem should be dismissed, a substitute trustee appointed and the property ordered sold. The court permitted petitioners to redeem

by paying into court on September 15, 1942, the fixed value of $5,650.00 and $120.00 for taxes and insurance premiums advanced by the petitioner.

The District Judge did not hear any evidence on the allegation of the petitioners' petition to redeem that the $853.50 paid to the North Manchester Bank with alleged estimated costs for repairs to the buildings, drains and fences of $1,000.00 was the equivalent of two-fifths crop rent for the moratorium and redemption periods, or any other evidence. Neither did he hear any evidence on the allegation of respondent's answer relative to rental alleged to be due and admitted to be unpaid. The order of re-reference to the Special Master to determine the amount of rental due was set aside in the order permitting redemption. An implied finding of fact was made that the allegations of the petition to redeem were true without hearing any evidence in support thereof and notwithstanding denial by the respondent in its answer together with the allegation that $4,606.25 rental was due and unpaid under the order fixing two-fifths crop rental.

REASONS WHY THE WRIT SHOULD BE DENIED.

The contested issues in the Circuit Court of Appeals were:

(1) Should redemption have been allowed (a) after expiration of the time fixed for that purpose, and (b) without payment of rent for the use of the property from the beginning of the moratorium period?

(2) Should the respondent's claim for the payment of rent by the petitioners have been denied; and should an implied finding of fact have been made which was based only on the verified pleadings that unpaid taxes and costs

of necessary improvements were equal to the rent payable by the petitioners for the use of the property since 1937?

The Circuit Court of Appeals reversed the District Court (Record, page 75) and remanded the cause with directions to dismiss the petition to redeem and for further proceedings consistent with law. The opinion (Record, pages 70-75) was prepared by Judge Major, in which he said that the February 17, 1942, order fixing the value of the property and the period of redemption was entered pursuant to this court's ruling in Wright v. Union Central Life Insurance Company, 311 U. S. 273, 85 L. Ed. 184, 61 S. Ct. 196 (Record, page 72) and that the District Court erred in permitting redemption after expiration of the time fixed for that purpose. He also brought out in his opinion that the Appellate Court found that the order of February 17, 1942—under which the petitioners attempted to redeem —was a final order which became binding on them and the respondent in the absence of timely appeal and upon non-redemption within the fixed time the petitioners thereafter had no right to redeem and the District Court was without authority to allow redemption. The issue as to the payment of rental was not decided for the stated reason that it was

> ". . . material only in the event the debtors were entitled to redeem." (Record, page 71.)

The petitioners' principal contention in their petition and brief is that this court in Wright v. Union Central Life Insurance Company, 311 U. S. 273, 85 L. Ed. 184, 61 S. Ct. 196, read out of the Act all of the provisions relative to the payment of rent. We submit that the only question decided in that case was that the farmer's right to redeem is prior and superior to the creditor's right to a public sale.

Mr. Justice Douglas did not say that rent, the fixing, payment and distribution of which is provided for in the Act, was not to be paid by the farmer. This court had theretofore said, through Mr. Justice Brandeis in Wright v. Vinton Branch, etc., 300 U. S. 440, 81 L. Ed. 736, 57 S. Ct. 556, in holding new subsection (s) constitutional, that

> ". . . the debtor's tenure under the stay is subject to the requirement that he pay 'a reasonable rental semi-annually for that part of the property of which he retains possession.'" (Page 461.)

The petitioners attempted to redeem under the February 17, 1942, order which order permitted redemption (1) upon payment of the fixed valuation of $5,650.00 into court, (2) on or before ninety days from February 17, 1942, (3) plus the amount of rental found due by the Conciliation Commissioner. The ninety-day period expired May 18, 1942. Almost five months after the fixed redemption period had expired they claimed the right and the District Court granted them the privilege of redeeming upon part compliance with the February 17, 1942, order. It was the duty of the petitioners to have the rental found to be due for the moratorium and redemption periods fixed for the purpose of enabling them to redeem. They failed to do so and then attempted to redeem under that part of the order favorable to their interests and disregarded the part which they considered contrary to their interests. If dissatisfied with the order, or any part of it, it was their duty to appeal. The order became final, binding and impregnable to attack when no appeal was taken within the time limited by statute. Bernards v. Johnson, 314 U. S. 19, 86 L. Ed. 11, 62 S. Ct. 30.

In addition to the implication (which the petitioners would have this court assume as a fact) that witnesses

were heard at the hearing on the petition to redeem or evidence was received other than the verified pleadings they contend that the petition to redeem (Record, pages 28-31) is also a petition for an extension of time in which redemption could be made. The petition to redeem does not include any such allegation nor does it ask for an extension of the time fixed in the February 17, 1942 order. It simply announced the petitioners' readiness on September 2, 1942 to comply in part with the order under which redemption could have been made on or before May 18, 1942 upon payment of the fixed valuation of $5,650.00 plus the rent found to be due for the moratorium and redemption periods.

CONCLUSION.

Shall the court or the farmer determine the time and manner in which redemption be made? The Circuit Court of Appeals very properly held that it was the prerogative of the court. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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A copy of this answer has been furnished to Samuel E. Cook, Huntington, Indiana, Attorney for the petitioners. This May 20, 1944.

THEO. W. BATES.